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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 613

ANNETTE STAYT HALL, ET AL., *Petitioners,*

v.

VIRGINIA PENFIELD SCARLETT, ET AL.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

FREDERICK M. BRADLEY,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
Facts	1
Question	2
Statute	2
Conclusions of the Courts Below	3
Reasons for Denial of Petition for Certiorari—	
1. Argument	4
2. No Basis for Certiorari	6
3. Conclusion	8

CITATIONS.

Del Vecchio v. Bowers, 296 U. S. 280, 285	8
District of Columbia v. Pace, 320 U. S. 698, 702	8
Hood v. McGehee, 189 F. 205; 199 F. 989; 237 U. S. 611	6
McIntyre v. Hardesty, 149 S. W. (2d) 334; 347 Mo. 805	7
Rockwell v. Tracy, 39 W. L. R. 475	7
Weber v. Griffith, 159 S. W. (2d) 670, 673	7
154 A. L. R. 1179, 1180	5
1 Am. Jur. 656 (Sec. 57)	5

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THE FACTS

The facts, which are undisputed, are clearly and succinctly stated in the opinion of the Court of Appeals for the District of Columbia Circuit thus (R. 26):

> "Appellee Scarlett filed in the District Court of the United States for the District of Columbia a petition for letters of administration of the estate of Blanche M. Penfield, who died May 2, 1947. She alleged that she was the niece and sole heir at law and next of kin of the decedent and that the decedent died intestate. Thereafter, appellants Hall and others filed a petition as claimant distributees of the estate, being cousins in the first degree of the decedent. Appellees and claim-

ants filed motions for summary judgment. The District Court granted the motion of Mrs. Scarlett.

"Mrs. Scarlett was the daughter of a deceased brother of the decedent here. In 1922 she was adopted by her maternal grandmother by a decree of a Nevada court. Prior to 1937, her adoption had no effect upon her right to inherit, under the laws of the District of Columbia, from or through her natural parents. But on August 25, 1937, an act of Congress, which constituted a comprehensive adoption statute for the District of Columbia, became effective. Two provisions of that act give rise to the present controversy."

THE QUESTION.

The question before the Court was likewise stated thus (R. 26):

"The question is whether Mrs. Scarlett's right to inherit from her natural aunt, through her relationship to her natural father, was cut off by the 1937 act."

THE STATUTE.

The Court then said "the pertinent provisions of that statute are now Sections 16-205 and 16-207 of the Code of the District of Columbia, reading as follows:

"Entry of a final decree of adoption shall establish the relation of natural parent and natural child between adoptor and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adoptor, except that adoptee shall not inherit from collateral relatives of or the parents of adoptor although such collateral relatives and parents of adoptor shall have the right of inheritance from adoptee. All rights and duties including those of inheritance and succession between adoptee, his or her natural parents, their issue, collateral relatives, and so forth, shall be cut off. In the event one of the natural parents shall be the spouse of petitioner, then the rights and relations as between adoptee, such natural parent, and his or her parents and collateral

relatives, including mutual rights of inheritance and succession, shall in nowise be altered.

"The provisions of sections 16-201 to 16-207 shall have no retroactive effect and shall not be construed as affecting in any way the rights and relations obtained by any decree of adoption entered prior to August 25, 1937, and all proceedings instituted and pending on August 25, 1937, shall be carried to their final determination in accordance with the provisions of section 395 of the Act of March 3, 1901, 31 Stat. 1252, ch. 854, as if sections 16-201 to 16-207 had not been enacted, and all orders and decrees entered therein shall remain valid and binding on all parties thereby affected."

CONCLUSIONS OF THE COURTS BELOW.

Both the United States District Court for the District of Columbia in its opinion (R. 15A) and the United States Court of Appeals for the District of Columbia Circuit in its two opinions (R. 26 and 59), in each instance by a unanimous Court, affirmed Mrs. Scarlett's right to inherit from her natural aunt.

The District Court and the United States Court of Appeals unanimously held that the cut off applied only to persons adopted subsequent to the Act—thus the District Court said (R. 17A):

"It is not questioned that, in the absence of statutory provision, the right of a child to inherit from a parent, or such parent's collateral relatives, remains intact, even though such child be adopted by another. Obviously, the present law in the District of Columbia cuts off that right, but it seems evident that it was the intention of the Congress to make that provision applicable only to those who were adopted subsequent to the enactment of that legislation. While the non-retroactive provisions in Section 16-207 deal explicitly with adoption proceedings in the District of Columbia, they so clearly evidence the policy that other provisions of the Act, including those cutting off the rights of adoptee to inherit from natural parents and their

collateral relatives, should not be construed as having application contrary to such policy.

The United States Court of Appeals said (R. 27):

> "But we do not reach that section, being of opinion that we need go no further than Section 16-205. The cut-off there provided is clearly a consequence of a decree to be entered under the new act. The section begins, 'Entry of a final decree of adoption shall establish the relation of natural parent and natural child . . . ' Then, in the next sentence, it provides, 'All rights . . . between adoptee, his or her natural parents, . . . and so forth, shall be cut off.' This means cut off by the entry of a final decree, described in the first sentence. And this provision is by its very terms prospective. The whole concept of adoption was altered by the new act, and its provisions relate to the effects of decrees entered under it. It is our view, therefore, that the Adoption Act of 1937 did not affect the status or rights of appellee Scarlett."

And in the opinion of the Court of Appeals upon Petitioners' Second Petition for Rehearing (R. 59):

> "We meant, and now mean, that Section 16-205 of the District of Columbia Code refers to the entry of a final decree under or in view of the Act and hence after the date of enactment of the Act. In so saying we say two things: (1) that 'entry of a final decree' means entry of a decree either within or without the District of Columbia, but we do not attempt to define the extent of the effect of a foreign decree because we do not have that problem in this case; and (2) that we do not think that the filing of a foreign decree with the Bureau of Vital Statistics and the consequent issuance of a new birth certificate, under Section 16-204 as amended, is the 'entry of a final decree of adoption' within the meaning of Section 16-205."

ARGUMENT.

Both the District Court and the Court of Appeals based their decisions on recognized principles of law.

An Annotation entitled "Conflict of Laws as to Adoption as Affecting Descent and Distribution of Decedent's Estate", 154 A.L.R. 1179, at pp. 1179-80, states:

> "The general rules * * * appear to be that * * * by the better view and weight of authority (b) the rights of inheritance of the child, as an adopted child, in the property in question will be determined by the law of the state where * * * decedent was domiciled, so that, if a child locally adopted had no rights of inheritance, a child adopted under the foreign law and having rights of inheritance under that law will have no rights of inheritance in local property; * * * and, conversely, if a locally adopted child had under the local law unlimited rights of inheritance in local property, a child adopted under the foreign law and having under that law limited or restricted rights of inheritance, will be accorded the same unlimited rights of inheritance in local property as is a child locally adopted."

The above reasoning immediately reduces the case to the simple question whether the Adoption Act of 1937 cut off rights of inheritance of a child adopted prior to the Act, regardless of the place of adoption of the child or how long prior to the Act the adoption occurred.

1 Am. Jur., Adoption of Children, Sec. 57, at page 656, furnishes the following guide to the construction of statutes determinative of the rights of inheritance by adopted children from or through natural parents:

> "Consanguinity is so fundamental in Statutes of Descent and Distribution that it may only be ignored by construction when courts are forced so to do, either by the express terms of the statute or by inexorable implication. An adopted child is, in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its rights of inheritance from its natural parents, unless the statute expressly so provides."

The Courts below in complete harmony with the above principles of law on rights of inheritance of adopted child-

ren, and upon a sound construction of the Adoption Act of 1937, found in favor of the natural right of inheritance of Mrs. Scarlett from her aunt.

NO BASIS FOR CERTIORARI.

The decisions of the Supreme Court of the United States have always upheld the right of each State to control inheritance within that State.

And the Federal Courts have refused to change the State law even when it ran against the current of authority. See *Hood* v. *McGehee,* 189 F. 205, Aff'd. 199 F. 989, Aff'd. 237 U. S. 611. The decisions of the Courts below in the instant case are in complete harmony with the current of authority.

The Petitioners' "Questions Presented" have been briefly and clearly answered in Appellees' Answer to Petition for Rehearing (R. 36-41, Inc.) and Appellees' Answer to Second Petition for Rehearing (R. 53-58, Inc.).

There was no lack of full faith and credit accorded by the Court below to the status of adoption created by the law of Nevada. Mrs. Scarlett's status of adoption and all the component parts of its legality, including the date of its creation, were fully recognized (R. 56) (II. Criticism of Phrase from Decision Unwarranted.)

No matter what complex interpretations Petitioners attempt to wrestle from the unanimous opinions of the Court below, all that Court has said is that Mrs. Scarlett was adopted prior to the Adoption Act of 1937 (recognizing fully her status) and therefore, by the plain terms of the Act, its cut-off provisions do not affect her right to inherit from her natural aunt, a District of Columbia domiciliary (regardless of the place of her adoption).

There is no lack of recognition by the Court of the mandatory operation of the Act of 1937, but the law can only be mandatory as to those persons upon whom the cut-off provision operates. By reason of its being prospective, its mandatory operation can have no effect on adoptees adopted prior to the Act.

There is no conflict with the established rule of property in the District. *Rockwell* v. *Tracy* (1911), 39 W.L.R. 475, cited on page 14 of Petitioners' Petition, was fully treated by Appellees in the lower Court in support of their position. The case stands for the simple proposition that the District recognized the status of adoption established in Pennsylvania. The lower Courts recognized Mrs. Scarlett's status as a Nevada adoptee.

There is no conflict with the new concept of adoption heretofore judicially approved (R. 39). (b) No conflict with Prior Decisions of this Court (U. S. Ct. App.).

The Court applied the pertinent rule of statutory construction which preserves to an adopted child all of its natural rights of inheritance unless the legislature by express statutory provision takes away those rights (See page 5, *supra*).

The petition for certiorari at page 7 states that the appellate court "also decided the case for Scarlett, in a new aspect of the 1937 Act not presented by any party and not an issue in the District Court". This is in error. Petitioners fourth point of alleged error by the District Court in their original brief filed in the United States Court of Appeals (which they did not make a part of the record here) is as follows:

> "4. In holding that Congress intended, in the 1937 Adoption Act, to limit the provision for cutting off the natural rights of the adoptee as applicable only to persons adopted subsequent to enactment of the 1937 Act."

Appellees fully answered this in their reply brief (also not made a part of the record here), citing and quoting from *McIntyre* v. *Hardesty*, 149 S.W. (2d) 334, 347 Mo. 805; *Weber* v. *Griffith* (1942), 159 S.W. (2d) 670, 673.

Thus the question was squarely before the United States Court of Appeals and the District Court.

The testamentary papers executed by Walter S. Penfield, father of Respondent, Virginia Penfield Scarlett, referred

to in Footnote 3, page 6 of the Petition, obviously have no bearing on the instant case. The declaration of trust referred to was declared invalid in District of Columbia Equity Case No. 55326 by decree dated January 28, 1935.

The 1946 Amendment, referred to in the Petition, page 10, and Footnote 8 thereof, does not affect the decision of this case. See R. 39, 40.

CONCLUSION.

The unanimous decisions of the Courts below are in accord with recognized principles of law generally prevailing among the States. They are in accord with the decisions of this Honorable Court which have always upheld the right of each state to control inheritance within its boundaries.

The Court of Appeals gave full effect to the status of the adoption in Nevada and accorded to Respondent, Mrs. Scarlett, the same inheritance rights that are given to persons adopted prior to the Act of 1937 in the District of Columbia.

It is respectfully submitted that the question in issue was correctly decided by the Courts below. It related solely to a matter of local law, involving local rights of inheritance under the District of Columbia law, and is of local not general importance or public interest. This case does not qualify under the policy of Rule 38 of this Court. *District of Columbia* v. *Pace,* 320 U. S. 698, page 702; see also *Del Vecchio* v. *Bowers,* 296 U. S. 280, page 285.

It is respectfully submitted, therefore that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

FREDERICK M. BRADLEY,
ROGER M. STUART, JR.,
Attorneys for Respondents.

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REPLY OF PETITIONERS TO OPPOSITION OF RESPONDENTS.

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INDEX.

Page

I—The appellate opinions plainly contradict the respondent contention that, for the purpose of deciding the effective extent of the application of the 1937 District Adoption Act to the Scarlett claim to right of succession to the intestate estate, the appellate court considered Scarlett as being, in the District, on May 4, 1947, in a relation or status of adoption as the child of a stranger, the same as if adopted pursuant to the 1937 Act, as established by full faith and credit to the final decree of adoption of Scarlett, entered in 1922 in Nevada, and thereafter in full effect.

The opinions are thrice specific in the present denials, of effect of the 1937 Act, *first* as to the instant case, of entry of a final decree in a foreign jurisdiction before enactment of the 1937 Act, *second* as to the case of such entry after enactment of the 1937 Act, which is reserved to future decision of the effect of the decree, and *third*, as to the case of the provided filing of a final foreign decree to obtain an effect of the 1937 Act, which is held out to be the entry of a final decree under the meaning of Section 16-205 of the 1937 Act..... 1

II—Jurisdiction of the present petition appears established by the precedents cited to the contrary in the Opposition (Opp. p. 8).

The present case is clearly within the exceptional grant of certiorari recognized in the precedents stated in the Opposition..... 3

III—The argument of the Opposition, (pp. 4-5), that the decision below accords with accepted applications of conflict of laws, or consanguineal considerations, is dissipated by the cited principles.

The cited principles clearly except the instant case.... 5

Page

CONCLUSION—The propriety of grant of the petition may be resolved without extended argument, or indeed any argument 6

CITATIONS.

Delvecchio v. *Bowers*, 56 S. Ct. 190, 296 U. S. 280, 285, 80 L. Ed. 229 ..... 3, 4

District of Columbia v. *Pace*, 64 S. Ct. 406, 320 U. S. 698, 702, 88 L. Ed. 408 ..... 3, 4

National Mutual Ins. Co. v. *Tidewater T. Co.*, 69 S. Ct. 1173, 337 U. S. 582, 601, 93 L. Ed. 1556..... 4

Supreme Court Rules 38 and 39..... 3

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PETITIONERS' REPLY TO RESPONDENTS' OPPOSITION.

As reply to, and as in conclusive rejection of the positions of respondents stated in their Opposition, petitioners would respectfully show:

I—The appellate opinions plainly contradict the respondent contention that, for the purpose of deciding the effective extent of the application of the 1937 District Adoption Act to the Scarlett claim to right of succession to the intestate estate, the appellate court considered Scarlett as being, in the District, on May 4, 1947, in a relation or status of adoption as the child of a stranger, the same as if adopted pursuant to the 1937 Act, as established by full faith and credit to the final decree of adoption of Scarlett, entered in 1922 in Nevada, and thereafter in full effect.

Respondent contention (Opp. p. 6) rests entirely on the quotation from the factual statement in the first appellate

opinion (Opp. p. 2): *"In 1922 she was adopted by her maternal grandmother by a decree of a Nevada court"*, to which the appellate opinions make no other reference. The established status of adoption of Scarlett in the District, is recognized in the opinion of the District Court as necessary to its consideration of the relation between Section 16-205 and Section 16-207. By its exclusion of Section 16-207 from consideration and confinement of its decision to Section 16-205, and, later, to Section 16-204 as amended, the appellate court affirmatively excludes and refuses to recognize Scarlett, as in the relation or status of adoption in the District, and, consequently, as not subject to the 1937 Act in any aspect.

Three denials of full faith and credit to the Scarlett foreign decree appear in the appellate opinions proffered in the Opposition. (Opp. pp. 1, 2, 3, 4) *The first denial,* in the first opinion, (Opp. p. 4; R. 27), and affirmed in the second opinion, (Opp. p. 4; R. 59) is tacit, obtained by decision that the effects of the 1937 Act apply only to its own decrees, and hence did not affect the status or rights of Scarlett, as the case of a person who was adopted in a foreign jurisdiction before enactment of the 1937 Act. *The second denial,* in the second opinion, (Opp. p. 4, R. 59) is evident, in decision, in the case of the entry of a final decree in a foreign jurisdiction after enactment of the 1937 Act, that the extent of the effect of such foreign decree is expressly reserved until such case arises for decision. *The third denial,* in the second opinion, (Opp. p. 4, R. 59) is evident in decision—in the case provided, in Section 16-204 as amended, for the mandatory issue of a new birth certificate for an adoptee born in the District, the same as provided originally in reference to a final District decree entered under the 1937 Act, whenever there is filed, in the District, a certified copy of a final decree entered outside the District, and which provisions implicitly mandate full faith and credit to the foreign decree,—that such case is not the entry of a final decree within the meaning of Section 16-205.

At the threshold of the present case, the appellate opinions are plainly and progessively present denials of mandatory constitutional and statutory full faith and credit, as operations of law, in the instant case of a decree finally entered in a foreign jurisdiction before enactment of the 1937 Act, and, also, in the other cases of the entry of a final decree in the foreign jurisdiction, either before or after the enactment of the 1937 Act.

II—Jurisdiction of the present petition appears established by the precedents cited to the contrary in the Opposition (Opp. p. 8).

Rejection of the present petition is not controlled by Rule 38, or by *District of Columbia* v. *Pace,* 320 U. S. 698, 702, or *Delvecchio* v. *Bowers,* 297 U. S. 280, 285, relied on by respondent; instead, each expressly tends to grant of the petition.

By Rule 39, certiorari proceedings from the District of Columbia Courts are made subject to Rule 38, which additionally provides that public interest in prompt settlement may be a sufficient reason for grant of the writ. The wide effect of the decision below upon all foreign adoptees underwrites the public interest.

The application of Rule 38 is reasonably that:

> the decision is presented as (a) in the aspect of from substantially a State Court, of a federal question in a way probably not in accord with applicable decisions of this Court; (b) in a Circuit Court of Appeals, as of an important question of local law, probably in conflict with applicable local decisions; as of a federal question, probably in conflict with applicable decisions; as a departure from the usual course of judicial proceedings; (c) as an appellate decision in the District of a question of general importance, as one substantially relating to the application of the Constitution, as one not giving proper effect to decisions of this Court, and by Rule 39, of public interest as requiring prompt settlement.

Jurisdiction is taken of cases from the Courts of the District where interest or effect is apparent beyond that disclosed in cases based only upon statutes confined to the District of Columbia or which declare its common law. Jurisdiction was taken in the *Bowers* case, because it involved a compensation act, national in scope, and decisions about its enforcement have national effects as precedents. Jurisdiction was taken in the *Pace* case, because of the importance and effect of settled administration of the District tax laws.

The scope of effect of the present decision is submitted, for the reasons noted in the *Bowers* and *Pace* cases, to justify jurisdiction by this Court.

As heretofore held below, by Judge Vinson, (Petition p. 15) Congress followed the lead of certain state legislatures in the enactment of a new concept of adoption in the 1937 Act.

In *National Mutual Ins. Co.* v. *Tidewater T. Co.*, 337 U. S. 582, this Court recently reaffirmed the established principle that Congress, in legislating for the District of Columbia, *"exercises this particular power, like all its other powers, in its high character, as the legislature of the Union"*.

Between the District and the States, in each of which the new statutory concept of adoption is effective, there are many reciprocal relations and especially as to constitutional full faith and credit in each jurisdiction to a final judicial decree duly entered in another jurisdiction. Comparison of the Nevada decree (R. 11A-12A) and the 1937 Act discloses close conceptual similarity between the Nevada and District laws of adoption, although previously enacted for many years in Nevada, as to parental consent, suitability of the adoptrix which is more restricted in Nevada, residence of the adoptee with the adoptrix for six months before entry of final decree in each jurisdiction, change of name, etc.

That in Nevada, or in other States, as in the District, the present judicial decision will become a final precedent to the effect that Congress, as *"the legislature of the Union"*,

intended to deny constitutional and statutory full faith and credit in the District to final decrees of adoption entered in Nevada or other States in its enactment of the new concept of adoption in the 1937 District Adoption Act, as amended, is submitted as ample cause for petitioners to invoke the judicial discretion of this Court by the present petition as to the propriety of the instant decision.

III—The argument of the Opposition, (pp. 4-5), that the decision below accords with accepted applications of conflict of laws, or consanguineal considerations is dissipated by the cited principles.

The rule of conflict of laws, (Opp. p. 5) relied on, is that the right of the child, as an adopted child, in the property will be determined by the law of the domicile of the decedent, so that, if a child locally adopted has no rights of inheritance, a child adopted under the foreign law, and having rights of inheritance under that law, will have no rights of inheritance in local property.

The above rule primarily predicates, *first*, that the Scarlett status as an adopted child, established by the Nevada decree, is established with the same effect in the District, *second*, that the local law of descent, whether of Nevada or of the District, is determinative of the prospective and expectant property rights applicable to the legal status defined in such local law, which is supreme in its jurisdiction, and is without any extra-territorial effect.

From these predicates, it follows, *first*, that the cut off of expectant natural right in 1937, of an adopted child, in the case where the decedent was living and had no heirs, which is the present case, to be applicable prospectively thereafter upon her death intestate, was and is a prospective and not any retroactive effect of the 1937 District Adoption Act; *second*, that, as the local law of property is supreme in Nevada and in the District, and not extraterritorial, different District laws do not affect any Scarlett

property rights obtained by her decree of adoption, or otherwise, under the Nevada laws.

It also follows that the provisos of Section 16-207 do not prevent the cut off of Scarlett natural right, which is not retroactive since it is prospective in effect, and which is without effect upon any Nevada property rights obtained under the Nevada decree since same remain in full effect in Nevada but are without effect in the District where its property law is supreme and applies to the adopted child.

In reliance upon consanguinity, the Opposition (p. 5) is that it may only be ignored by construction when courts are forced to do so either by express terms of the statute or inexorable implication; that an adopted child is not deprived of its rights of inheritance from its natural parents unless the statute expressly so provides.

The 1937 Act is plain and unambiguous, and obviously provides for the cut off of natural right of a person in the relation or status of adoption established by the entry of a foreign decree subject only to the limitations of Section 16-207, which are shown above to be not applicable to the present case. There is no need for construction when Scarlett is deprived of natural right by express provision of the 1937 Act.

CONCLUSION.

The summary denial of constitutional and statutory full faith and credit to judicial decrees is jealously guarded by this Court as the final arbiter of such matters. Such denial, in respect to foreign decrees of adoption by the 1937 District Adoption Act, being apparent in the decision below at the threshold of the present case, poses, immediately, a substantial question relating to the application of the Constitution.

The plain and explicit provisions of the 1937 Act are not given effect.

The decision, affecting personal and property rights provided in a statute similar to those in effect in numerous

states and having a constitutional aspect, is effective as a national precedent of wide public interest and consequent judicial concern.

Petitioners submit the propriety of grant of the petition is so plain that it may be resolved without extended argument, or indeed any argument, and abide the Discretion of the Court.

Respectfully,

CAMDEN R. MCATEE,
Attorney for Petitioners.